

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANGIE M. ALLISON)	
Claimant)	
VS.)	
)	Docket No. 1,013,100
HOLIDAY RESORT OF SALINA)	
Respondent)	
AND)	
)	
KANSAS HEALTHCARE ASSOCIATION)	
WORKERS COMPENSATION INSURANCE)	
TRUST)	
Insurance Carrier)	

ORDER

Respondent appeals the October 24, 2005 Post-Award Medical Award (Medical Award) and the November 14, 2005 Order For Payment Of Post-Award Attorney Fees And Expenses (Fees and Expenses Order) issued by Administrative Law Judge Bruce E. Moore. In the Medical Award, the Administrative Law Judge (ALJ) granted claimant post-award medical benefits, with Ali B. Manguoglu, M.D., as the authorized treating physician for the injuries suffered on April 24, 2001. The ALJ determined that claimant's complaints and need for ongoing medical care stemmed from that April 24, 2001 injury rather than from intervening causes, as argued by respondent. In the Medical Award, the ALJ directed counsel for claimant to prepare and file with the court, and serve upon opposing counsel, an affidavit of time and expenses incurred in prosecuting the post-award dispute. Respondent was given ten days from receipt of the affidavit to submit written argument regarding that allowance request. On November 14, 2005, the ALJ issued his Fees and Expenses Order, granting claimant's attorney \$1,545 in attorney fees and \$337.28 in expenses pursuant to K.S.A. 44-510k(c). Respondent, in its brief to the Appeals Board (Board), states:

In the event the Board reverses the findings of the administrative law judge, the Board should vacate the award of attorney fees. It should be noted that the

respondent and carrier take no issue with the amount of fees, only with their propriety in the event of reversal of the award.¹

ISSUES

1. Did the court err in finding claimant was entitled to additional medical care at the expense of respondent stemming from the April 24, 2001 date of accident?
2. Did the court err in finding respondent responsible for past medical expenses incurred after the Award?
3. Is claimant's attorney entitled to attorney fees for prosecuting the post-award claim?
4. If the Board overturns the post-award medical order, should the Board then vacate the award of attorney fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Medical Award and the Fees and Expenses Order issued by the ALJ should be affirmed.

Claimant suffered injury to her low back while working as a CNA (certified nursing assistant) for respondent on April 24, 2001. As a result of that injury, claimant ultimately underwent surgery under the hand of board certified neurosurgeon Ali B. Manguoglu, M.D. This surgery, on June 4, 2002, was comprised of a microdiscectomy at L5-S1. Claimant had suffered both back pain and left leg radiculopathy prior to the surgery. As a result of that surgery, claimant experienced a reduction in her back pain and a resolution of the lower extremity pain.

Dr. Manguoglu released claimant to return to work on October 14, 2002. Claimant then relocated to a different job with a company called Choices, where she worked with severely handicapped people. Claimant's primary patient at that time was a gentleman by the name of Jerry Farrar, who was paralyzed. Claimant testified that her duties while employed with Choices did not cause her physical difficulties.

¹ Respondent's Brief to the Board (filed Dec. 9, 2005) at 4.

On February 23, 2004, claimant began making documented visits to the emergency room at the Salina Regional Health Center. These visits were all for chronic low back pain, with progression to include the lower extremities as well.²

Claimant returned to Dr. Manguoglu on April 14, 2003, at which time she was complaining about the color of her incision and was experiencing some back pain. Claimant did not report any leg pain at that time. Dr. Manguoglu next saw claimant in March of 2004, at which time claimant continued with the left-sided back pain which she described as being worse with activity.³ The activities identified by claimant as being aggravating activities included getting up from a chair or from her bed, walking and bending. Dr. Manguoglu noted that when claimant went to the emergency room on February 23, 2004, she was complaining of right leg pain, as well as back pain. That would have been different than the pain described by claimant prior to the 2002 surgery. Dr. Manguoglu recommended claimant have a second MRI,⁴ which in his opinion indicated no evidence of a recurrent disc herniation. Claimant was next seen on October 18, 2004, at which time she was reporting severe recurrent back pain, with pain, numbness and tingling in both legs. Claimant was also having difficulties with the straight leg raising test, identifying pain at 30 degrees, which is more severe than the examination results elicited in December of 2002.

Dr. Manguoglu ordered another MRI,⁵ which identified a small central left herniated disc at L5-S1, which was different than the findings from six months before. Dr. Manguoglu considered this to be a change in claimant's physical structure between February of 2004 and November of 2004. When asked, Dr. Manguoglu acknowledged that usually to herniate a disc, some precipitating event is necessary. However, claimant has what he described as an injured disc or operated disc, which he went on to state can result when some people sneeze, lift a piece of paper or do nothing at all. Some patients have

² The visit dates to Salina Regional Health Center emergency room included February 23, 2004, October 5, 2004, December 3, 2004, December 27, 2004 and July 10, 2005. According to Dr. Manguoglu, the February 23, 2004 visit was for pain going down the right leg (see Manguoglu Depo. (Aug. 24, 2005) at 14). According the medical records from Salina Regional Health Center, all of the remaining visits were for chronic back pain radiating into both legs.

³ Per Dr. Manguoglu's March 1, 2004 report (Manguoglu Depo. (March 2, 2004), Ex. 3), claimant was having low back pain and right-sided leg pain. The March 1, 2004 report also states that at the end of January 2004, claimant called Dr. Manguoglu's office with left-sided back pain, worse with activity. The March 1, 2004 report also states that claimant went to the emergency room on February 23, 2004, because of significant pain in her right leg and distal right lower extremity numbness.

⁴ The second MRI was performed on February 27, 2004.

⁵ This MRI was performed in October 2004.

reoccurrence of the disc herniation without any history of trauma.⁶ This was common in one who was post surgery.

Respondent argues that claimant has suffered a change in her physical structure subsequent to the injury and respondent should, therefore, not be held responsible for the medical care related to that change in physical structure. Respondent argues that claimant had a subsequent injury which precipitated her current need for treatment.

Claimant argues that her ongoing difficulties are related to her work accident of April 24, 2001, and are a natural consequence of claimant's original injury. No evidence in the record disputes claimant's testimony that she has suffered no intervening injury or disputes Dr. Manguoglu's opinion that claimant's difficulties are common in post-surgical patients, such as claimant, and specifically as with the history elicited from claimant.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.⁷

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.⁸

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁹ The Board acknowledges that where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause, it would not be compensable.¹⁰

In this instance, the Board finds that claimant's ongoing difficulties and need for additional medical care arise out of and stem from the April 24, 2001 accident with respondent. Both claimant's testimony and the testimony of Dr. Manguoglu point to claimant's ongoing problems as being a direct and natural consequence of the original injury to claimant's back. The Board, therefore, finds that the ALJ's determination that

⁶ Manguoglu Depo. (Aug. 24, 2005) at 20.

⁷ K.S.A. 44-501 and K.S.A. 44-508(g).

⁸ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

¹⁰ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

claimant is entitled to additional medical care, with Dr. Manguoglu as the authorized treating physician, should be affirmed.

The ALJ went on to award attorney fees and expenses to claimant's attorney in the November 14, 2005 Fees and Expenses Order. Respondent, in its brief to the Board, takes no issue with the amount of attorney fees, only with their propriety in the event of a reversal by the Board. As the Board has affirmed the Order of the ALJ, the Board finds that the attorney fees and expenses as ordered by the ALJ should, therefore, also be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Post-Award Medical Award dated October 24, 2005, and the Order For Payment Of Post-Award Attorney Fees And Expenses from Administrative Law Judge Bruce E. Moore dated November 14, 2005, should be, and are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Norman R. Kelly, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director